ABDUL AZIZ ATAN & ORS.

v.

RENGO MALAY ESTATE SDN. BHD.

SUPREME COURT, JOHOR BAHRU
WAN SULEIMAN SCJ
HASHIM YEOP SANI SCJ
WAN HAMZAH SCJ
[CIVIL APPEAL NO. 28 OF 1985]
19 NOVEMBER 1985

LABOUR LAW: *Employment - Termination of - Payment to employees under reg. 8 of Employment (Termination and Lay-Off Benefits) Regulations 1980 - What constitutes a change in ownership of a business - Definition of "business" - Regulation 2 - Whether deemed termination of a contract of employment.*

Rengo Malay Estate Sdn. Bhd. had an issued capital of 5,000,020 fully paid ordinary shares of RM1 each. On 10 March 1981, these shares were sold to Gemas Bahru Estate Sdn. Bhd. On 3 November 1982, 88 employees of Rengo Malay Estate Sdn. Bhd., the appellants, lodged a complaint under s. 69 of the Employment Act 1955 and claimed a sum of RM168,670.40 allegedly payable to them under reg. 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 ("the 1980 Regulations"). The appellants' claim was dismissed by the Assistant Director of Labour and an appeal from the said decision was dismissed by the High Court. The appellants appealed to this Court.

The point in dispute was only whether by virtue of the sale and purchase agreement of the shares dated 10 March 1981 there was a change in the ownership of the business of the estate.

Held:

[1] Regulation 8 of the 1980 Regulations could not have been intended to deem termination of a contract of employment by reason only of a change in the ownership of shares of a company. (*Kumpulan Kamuning Sdn. Bhd. v. Rajoo & Others* [1983] CLJ (Rep) 207 distinguished *Associated Motor Industries* (*M*) *Sdn. Bhd. v. Thangaraju a/1 Poomie* not followed).

[2] Change of ownership of business envisaged by reg. 8 is more than a change of ownership of shares of a company alone. (*Cameron v. Hector Finlayson & Co. Ltd.* [1967] 2 ITR applied).

[3] The term "business" referred to in reg. 8 means the activity or undertaking carried out by a person or body of persons.

[Appeal dismissed with costs.]

Cases referred to:
Kumpulan Kamuning Sdn. Bhd. v. Rajoo & Others [1983] CLJ (Rep) 207
Cameron v. Hector Finlayen & Co. Ltd., [1967] 2 ITR 110
Dallow Industrial Properties Ltd. v. Else [1967] 2 All ER 30
Melon v. Hector Powe Ltd. [1981] 1 All ER 313

Legislation referred to:
Employment Act 1955, s. 69
Employment (Termination and Lay-off Benefits) Regulations 1980, reg. 8
Redundancy Payments Act 1965 [UK], ss. 13, (1), (1)(a)

JUDGMENT

Hashim Yeop Sani SCJ:

We dismissed the appeal on 19 November 1985 and now give our reasons.

Rengo Malay Estate Sdn. Bhd. had an issued capital of 5,000,020 fully paid ordinary shares of RM1 each registered in the names of 25 owners. On 10 March 1981 these shares were sold to Gemas Bahru Estate Sdn. Bhd. for ringgit fifteen million and sixty only. The main assets of Rengo Malay Estate Sdn. Bhd. consisted of 1948 acres of land of rubber and oil palm estates.

On 3 November 1982, 88 employees of Rengo Malay Estate Sdn. Bhd. lodged a complaint under s. 69 of the Employment Act 1955 and claimed for RM168,670.40 representing the sum allegedly payable to them in April 1982. The claim was based on reg. 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980.

Regulation 8 of the 1980 Regulations requires that when "a change occurs in the ownership" of a business or part of a business by sale or otherwise the contract of service of the employee shall be deemed to have been terminated unless:

(a) within seven days of the change of ownership the person by whom the business is taken over offers to renew the contract of service on terms and conditions not less favourable; and

(b) the employees accept the offer.

The complaint of the 88 employees in this case was heard by the Assistant Director of Labour, Kluang who dismissed their claim on 16th May 1983. The Assistant Director gave his reasons as follows:

> I am satisfied that all the 88 complainants were employees of the Rengo Malay Estate Sdn. Bhd. and that they were working for the defendant - at its rubber estate before and after the sale of the defendant's shares on the same terms and conditions of service.
>
> I am also satisfied that the shares of the Rengo Malay Estate Sdn. Bhd. did change hands, with the legal entity of the company remaining the same even after the transfer of shares took place.
>
> Further, I am satisfied that all the complainants were still working for defendant without loss in seniority or break of service after the sale of the shares took place. The services of the complainants were never terminated.

The employees then appealed to the High Court. The High court dismissed the appeal.

The point in dispute was only whether by virtue of the sale and purchase agreement of the shares dated 10 March 1981 there was a change in the ownership of the business of the estate.

The learned Judge distinguished *Kumpulan Kamuning Sdn. Bhd. v. Rajoo and Others* [1983] CLJ (Rep) 207 since that case dealt with the sale by the company of a part of its operations which thereby passed into new hands. It would appear that the learned Judge also disagreed with a decision of another High Court Judge in *Associated Motor Industries (M) Sdn. Bhd. v. Thangaraju a/1 Poomie* K.L. High Court O.M. A44 of 1982. In the latter case, the appellant limited company, engaged in the business of assembling motorcars had all its shares owned initially by Wearne Bros subsequently sold them to Ford Motor Company. It was contended on behalf of the employees in that case that the "take-over" amounted to a change in the ownership of the business and the Judge there agreed.

The reasoning of the Judge in this case is summarised in a short paragraph appearing in his judgment at p. 115 of the record.

> In the present case there was no change whatsoever in the constitution of Ladang Rengo Malay Estate Sdn. Bhd. The company did not change its identity or personality. And it continued to own all the assets of the estate which were an integral part of the business for the purposes of which the Applicants were employed.

The trial Judge did not consider reg. 8 of the 1980 of Regulations to support the construction contended by Counsel for the appellants.

The crucial words in reg. 8 for our purpose are the words "change in the ownership of a business". "Business" is defined in reg. 2 as follows:

> Business includes trade, industry, profession, undertaking and any activity carried on by a person or body of persons whether corporate or incorporate.

"Business" referred to in reg. 8 is therefore the activity or undertaking carried on by the person or body of persons.

The change that took place here was only the change in the ownership of the shares of the company. The company was not dissolved. There was no transfer of the assets or stock-in-trade of the company. Rengo Malay Estate Sdn. Bhd. was and is still legally the owner of the estate undertakings.

The phrase "change in the ownership of a business" also appears in s. 13(1) of the English Redundancy Payments Act 1965. There are many cases on the eligibility for redundancy payments under the Act but we need refer only to a few. In *Dallow Industrial Properties Ltd. v. Else* [1967] 2 All ER the question in the appeal was the true construction of the words "If a trade or business is transferred from one to another". However in analysing s. 13(1) of the Redundancy Payments Act 1965 Lord Diplock said at p. 33:

> In order to come within s. 13(1) there must be a change of ownership, not merely in an asset of a business as in this case, but a change of ownership in the combination of operations carried on by the trader or by the non-trading body of persons, and there can only be a change of ownership in a business or part of a business, including business activity in the sense which I have construed it, if what is transferred is a separate and self-contained part of the operations of the transferor in which assets, stock-in-trade and the like are engaged.

In *Melon v. Hector Powe Ltd.* [1981] 1 All ER 313 the House of Lords was asked to consider the application of the words "or of a part of such a business" also appearing in s. 13(1)(a) of the Redundancy Payments Act 1965. In the course of his judgment Lord Fraser of Tullybelton drew the distinction between a transfer of business and a transfer of physical assets. At p. 317 he said:

> It seems to me that the essential distinction between the transfer of a business, or part of a business, and a transfer of physical assets, is that in the former case the business is transferred as a going concern, 'so that the business remains the same business but in different hands' (if I may quote from Lord Denning M.R. in *Lloyd v, Brassey* [1969] 1 All ER 382 at 384, [1969]2 QB 98 at 103 in a passage quoted by the industrial tribunal), whereas in the latter case the assets are transferred to the new owner to be used in whatever business he chooses.

Regulation 8 could not have been intended to deem termination of a contract of employment by reason only of a change in the ownership of shares of a company. Change of ownership envisaged by reg. 8 is more than a change of ownership of shares of a company alone.

Indeed shares of a company may change hands many times. In *Cameron v. Hector Finlayson & Co. Ltd.* [1967] 2 ITR 110 the share capital of the respondent company was sold and the company continued in business and the applicant remained in its employment after the sale of the shares. Apparently the applicant was transferred to work at the respondent company's new premises. It was held *inter alia* that although the share capital of the company was acquired by another firm the company still survived and carried on business as such and there was therefore no legal change of the business and s. 13 of the Redundancy Payments Act did not apply.

Under the circumstances reg. 8 of the Employment (Termination and Lay-Off Benefits) Regulations 1980 cannot in our view be construed to **deem** termination of the contract of employment of the appellants where there was only a change in the ownership of the shares of Rengo Malay Estate Sdn. Bhd.

We are of the view therefore that the conclusions of the Assistant Director and the appellate Judge are correct. Appeal dismissed with costs.

Also found at [1986] 1 CLJ 373